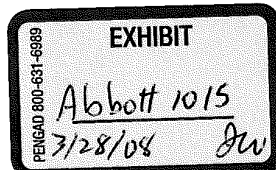


Exhibit 10

United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al.
v. Dey, Inc., et al., Civil Action No. 05-11084-PBS

**Exhibit to the August 28, 2009 Declaration of Sarah L. Reid
In Support of Defendants' Common Opposition to Plaintiffs'
Motion for Partial Summary Judgment**



PROGRAM MEMORANDUM INTERMEDIARIES/CARRIERS

Department of Health
and Human Services

Health Care Financing
Administration

Transmittal No. AB-98-76

Date DECEMBER 1998

CHANGE REQUEST #745

SUBJECT: Implementation of the New Payment Limit for Drugs and Biologicals

The purpose of this program memorandum (PM) is to furnish you with instructions needed to implement the Code of Federal Regulations (CFR), 42 CFR 405.517, as amended in the Federal Register (FR) in 63 FR 58849. This section of the regulations specifies that drugs and biologicals be paid based on the lower of the billed charge or 95 percent of the average wholesale price (AWP) as described below.

Payments for Drugs and Biologicals

Drugs and biologicals not paid on a cost or prospective payment basis are paid based on the lower of the billed charge or 95 percent of the AWP as reflected in sources such as the Red Book, Blue Book, or Medispan. Examples of drugs that are paid on this basis are drugs furnished incident to a physician's service, drugs furnished by pharmacies under the durable medical equipment benefit, covered oral anti-cancer drugs, and drugs furnished by independent dialysis facilities that are not included in the end stage renal disease composite rate payment.

Currently, the AWP of a drug or biological is determined by the methodology described in PM AB 97-25 dated January 1998. Effective with your next scheduled drug payment update, but no later than April 1, 1999, determine the AWP as described below.

Calculation of the AWP

1. For a single-source drug or biological, the AWP equals the AWP of the single product.
2. For a multi-source drug or biological, the AWP is equal to the lesser of the median AWP of all of the generic forms of the drug or biological or the lowest brand name product AWP. A "brand name" product is defined as a product that is marketed under a labeled name that is other than the generic chemical name for the drug or biological.
3. After determining the AWP, multiply it by 0.95. This is the new drug payment allowance limit. Do not round this payment allowance limit. There is no minimum for this amount.

Intermediary Processed Claims

The procedure for processing intermediary claims has not changed. As described in PM AB 97-25, all carriers will continue to furnish their drug payment allowance updates for all drugs and biologicals directly to the fiscal intermediaries in their jurisdiction free of charge.

Carriers should contact the fiscal intermediaries to determine the preferred method of transmission. Carriers are to send this information to all fiscal intermediaries they routinely deal with. If this method of obtaining payment allowance updates does not work for any intermediary, contact your appropriate regional office immediately.

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These instructions replace the current payment calculation instructions in PM AB-97-25; §5202 of the Medicare Carriers Manual, Part 3; §3644.E of the Medicare Intermediary Manual, Part 3; §2711.2.B.2 of the Provider Reimbursement Manual, Part 1, Chapter 27; and §319.1 of the Renal Dialysis Facility Manual. Manual revisions will be issued soon.

These instructions should be implemented within your current operating budget.

This PM may be discarded August 31, 1999.

Contact Person: Robert Niemann on (410)786-4569.